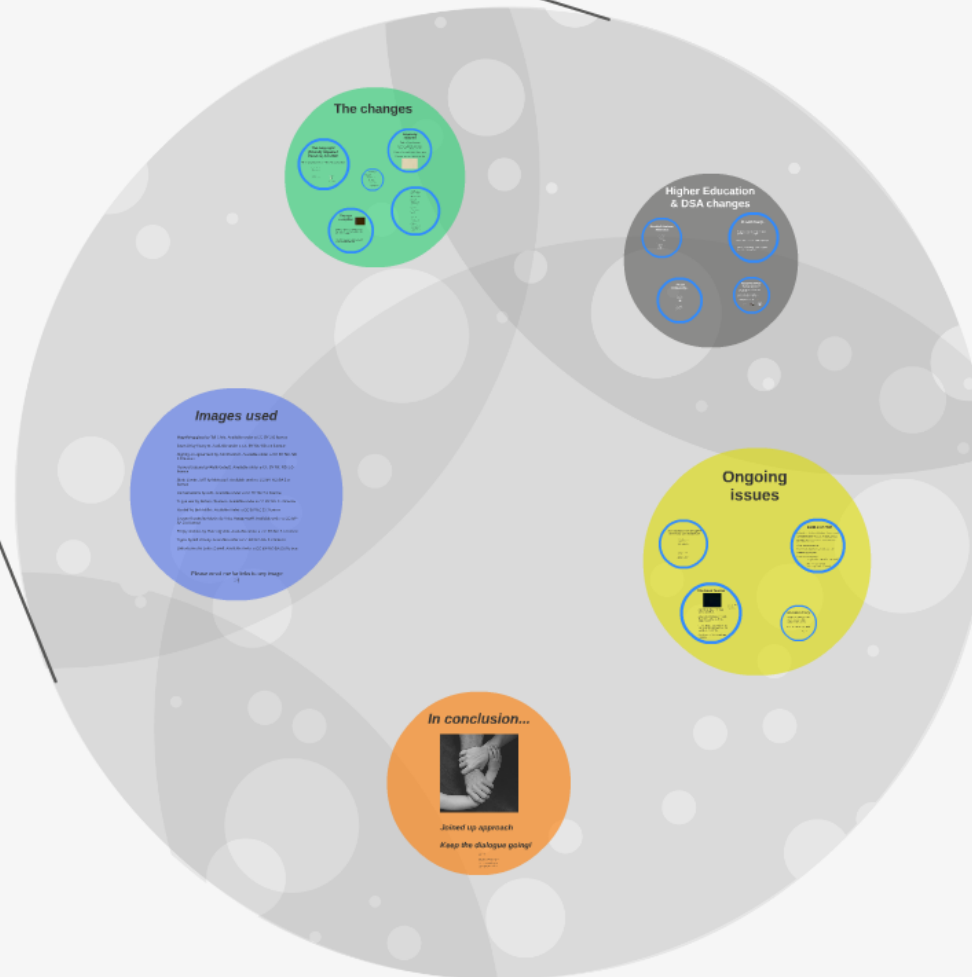




# Thank you for listening!



# **Beyond the lens to the new disability exceptions: additional needs in Higher Education**



Ruth MacMullen

CILIP Copyright Executive Briefing

1st April 2015

# Three things

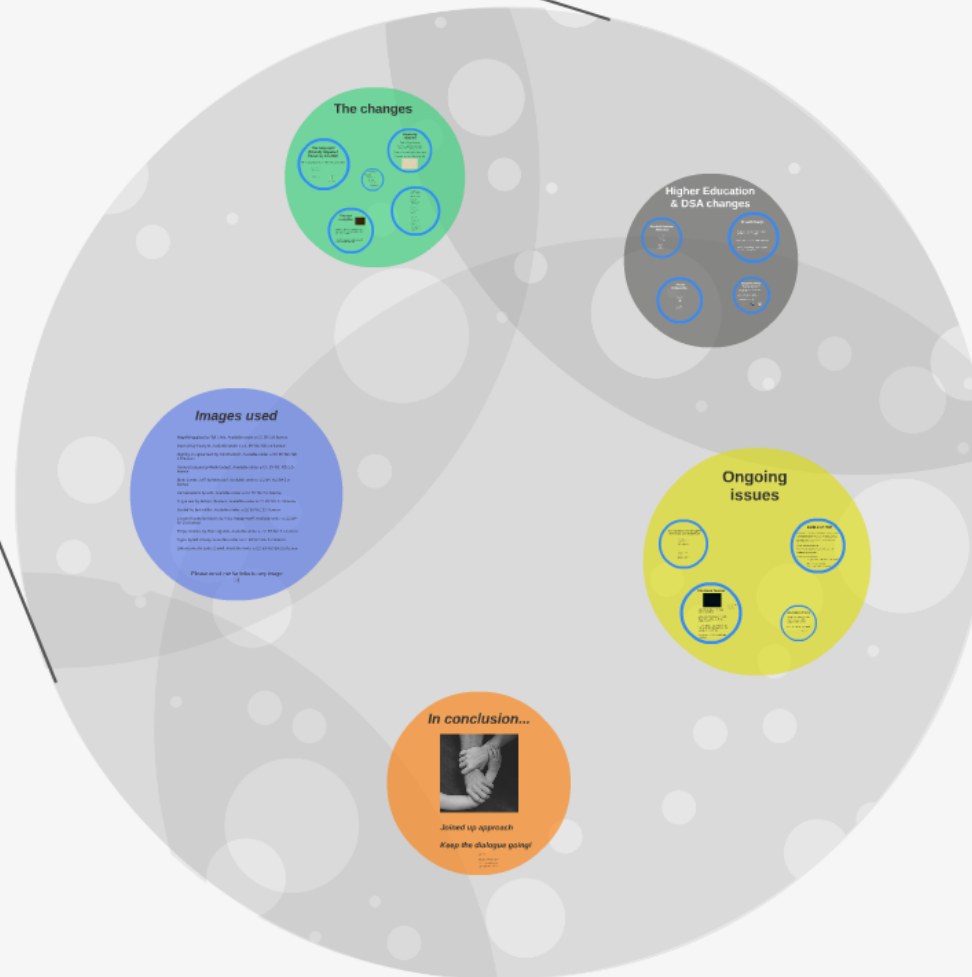
The way things were, and how they are now

How an HE institution is responding + changes to DSA

Ongoing + future issues



# Thank you for listening!



# The changes

## The Copyright (Visually Impaired Persons) Act 2002

Big improvement from what we had before

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© David Butler & Son Ltd. 2002

With thanks to:  
David Butler & Son Ltd.  
David Butler & Son Ltd.  
David Butler & Son Ltd.

### Summary

#### Before change:

- 30% only
- Certain works only
- Licences could restrict

#### After change:

- All works
- All the rights
- No licence override

Still an argument for working with rightsholders

## Licensing schemes

Could still have their uses

Communication with publishers  
and suppliers about the changes

Protection for rightsholders in the exception

Reporting - can see where demand lies



## The new exception



2014 no. 1384: The Copyright and  
Rights in Performances (Disability)  
Regulations 2014

Section renamed 'Disability' rather  
than 'Visual Impairment'

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# ***The Copyright (Visually Impaired Persons) Act 2002***

Big improvement from what we had before

A 'Visually Impaired Person' - someone who:

- Is blind
- Has a visual impairment that cannot be improved with lenses
- Is unable to hold a book
- Is unable to focus or move eyes to read.

An 'Accessible Copy' - a version which:

- Provides improved access to the work
- Includes facilities for navigating around the work

Works limited to:



Licensing schemes could restrict

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Works limited to:



Literary



Dramatic



Musical



Artistic

Licensing schemes could restrict

# ***The new exception***



2014 no. 1384: The Copyright and  
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Regulations 2014

Section renamed 'Disability' rather  
than 'Visual Impairment'

**31A - Disabled persons: copies of works for personal use**

Applies if "the person's disability prevents the person from enjoying the work to the same degree as a person who does not have that disability."

Must have lawful possession or use of the work

Only if "the same kind of accessible copies of the work are not commercially available on **reasonable terms** by or with the authority of the copyright owner."

**31B - Making and supply of accessible copies by authorised bodies**

"educational establishment" or "a body that is not conducted for profit"

Copies must contain statement of exception, and acknowledgment of copyright owner

Copy-protection must be reinstated

**31BA - Making and supply of intermediate copies by authorised bodies**

Copy of a work that is necessary to make the accessible copy

Can be shared with other authorised bodies  
e.g. Load2Learn service

**31BB Accessible and intermediate copies: records and notification**

Authorised bodies must keep records of copies made under 31B and 31BA, but not 31A

Copyright owner must be notified "within a reasonable time of making an accessible copy under section 31B"

**31F Interpretation and general**

"Disabled person" means a person who has a physical or mental impairment which prevents the person from enjoying a copyright work to the same degree as a person who does not have that impairment, and "disability" is to be construed accordingly.

An "accessible copy" means a version of a copyright work which enables the fuller enjoyment of the work.

No contractual override!

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# ***Licensing schemes***

Could still have their uses

Communication with publishers  
and suppliers about the changes

Protection for rightsholders in the exception

Reporting - can see where demand lies



# ***Summary***

## **Before change:**

- VIPS only
- Certain works only
- Licences could restrict

## **After change:**

- All works
- All disabilities
- No licence override

Still an argument for  
working with rightsholders

# Higher Education & DSA changes

## Disabled Students' Allowance

DSAs are available to students with a physical or mental health condition, a learning difficulty or a sensory impairment that affects their ability to study.

DSAs can be used to cover the cost of specialist equipment, non-medical help, travel costs, and other expenses that are necessary for a student to study.

## At our University...

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## *In summary...*

Educational establishments must provide a level playing field

What does 'inclusive' mean, anyway?

DSA changes should draw support departments together...

## *What are the duties of HE institutions under the Equality Act?*


Statutory duty to make 'reasonable adjustments'

s20 (6) - Information must be provided in an accessible format

Anticipatory requirement



# *Disabled Students' Allowance*

Government: Costs going up year on year 

- 2008-9: £91.7 million on 40,600 students
- 2011-12: £125 million on 53,000 students

50% of disabled undergraduates receive DSA

Those who do get better degrees, and are more likely to complete their course

(Numbers from the Equality Challenge Unit)

## *Changes*

### **Non-medical helper support**

Cost of human support e.g. notetakers and interpreters, is very high. Trend is to look to technical solutions and equipment

## **BUT**

### **Consumables**

Books, computers, scanners, printers, software not funded for individuals unless exceptional circumstances



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**BUT**

## **Consumables**

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# *At our University...*

*13.3% disabled students*

*9.6% is national average*

*400 students who claim a  
disability also claim DSA*



## *We may see more students...*

*Some are nervous of the library as a physical space -  
will need an online request form and online materials*

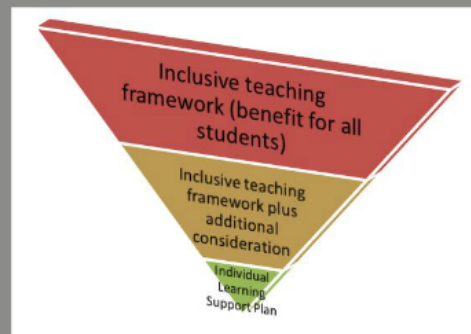
*More support and scanning requests from students  
with mobility, visual, hearing, cognitive impairments*

*Health conditions that fluctuate e.g. Chronic Fatigue  
Syndrome*

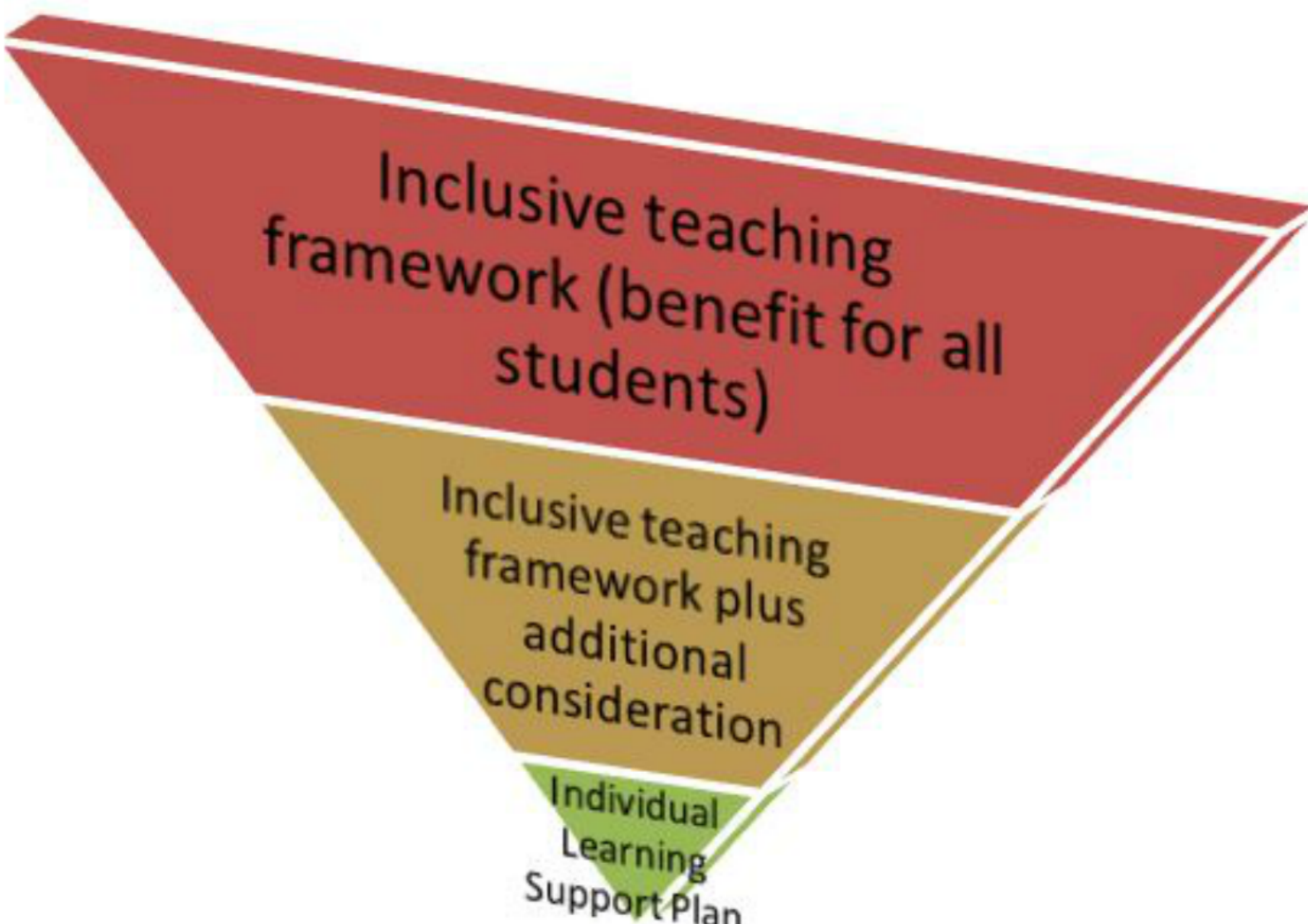
***13.3% disabled students***

***9.6% is national average***

***400 students who claim a disability also claim DSA***







Inclusive teaching  
framework (benefit for all  
students)

Inclusive teaching  
framework plus  
additional  
consideration

Individual  
Learning  
Support Plan

# ***We may see more students...***

Some are nervous of the library as a physical space -  
will need an online request form and online materials

More support and scanning requests from students  
with mobility, visual, hearing, cognitive impairments

Health conditions that fluctuate e.g. Chronic Fatigue  
Syndrome



# To report or not to report?



# ***Needs of disabled students?***

"People with disabilities do not come in templates."

"Each disability is a unique set of circumstances and has unique personal consequences; disability related support needs to be more responsive to individual needs, not subject to stereotyping and categorising, structured in tick boxes."

**Respondents to Snowden Survey, 2013**

*Tensions between Equality law and Copyright law*



# *Tensions between Equality law and Copyright law*





*NAD v. Harvard  
(3:15-cv-30023)*

*NAD v. MIT  
(3:15-cv-30024)*



***We need to be having these  
conversations, inside and outside  
of the library, right now***



BBC textbook had to be digitised by support worker.

DSA changes won't fund this in future.

Now have cause to go back to the lecturer and point out we need an accessible version - the library can help to source e.g. an accessible digital file.



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## ***In summary...***

Educational establishments must provide a level playing field

What does 'inclusive' mean, anyway?

DSA changes should draw support departments together...

# Ongoing issues

## UN Convention on the Rights of Persons with Disabilities

Article 30. Rights to Education

Article 30. Participation in cultural life, recreation, leisure and sport

## The book famine



- 285 million visually impaired people worldwide
- 90% of visually impaired people live in developing countries (WHO, 2014)
- 7% of all books published in the UK are available in braille, audio and large print (RNIB)
- This drops to 1% in developing countries

## DRM and TPM

**Extent of use** - IP address blocked when threshold reached

**Obfuscation/omission** - functionality is blocked or hidden

**Decomposition** - content is broken down to component parts and harder to save

**Threat** - pop-ups and warnings

**Frustration or chunking** - very common with e-books

**Restricted copy and paste**

**Secure container or wrapper**

From Article 17, Copyright Clearance Center (CCC) Library's Rights Management, One Association, and Universal Copyrights Digital Rights

Still have to appeal to Secretary of State (s296ZE)

## Marrakesh Treaty

Adopted by WIPO in June 2013... to date, only six countries have ratified

The UK is not one of them!

WIPO Copyright Treaty  
Marrakesh Treaty  
Copyright Clearance Center

# ***UN Convention on the Rights of Persons with Disabilities***

## **Article 24, Right to Education**

*'...without discrimination and on the basis of equal opportunity.'*

*'States Parties shall ensure that persons with disabilities are able to access general tertiary education, vocational training, adult education and lifelong learning without discrimination and on an equal basis with others.'*

## **Article 30, Participation in cultural life**

*"States Parties recognize the right of persons with disabilities to take part on an equal basis with others in cultural life, and shall take all appropriate measures to ensure that persons with disabilities enjoy access to cultural materials in accessible formats"*

# Article 24, Right to Education

'...without discrimination and on the basis of equal opportunity.'

'States Parties shall ensure that persons with disabilities are able to access general tertiary education, vocational training, adult education and lifelong learning without discrimination and on an equal basis with others.'

# Article 30, Participation in cultural life

"States Parties recognize the right of persons with disabilities to take part on an equal basis with others in cultural life, and shall take all appropriate measures to ensure that persons with disabilities enjoy access to cultural materials in accessible formats"

# ***The book famine***



TIGAR (hosted by Accessible  
Books Consortium, WIPO)  
Trusted Intermediary Global  
Accessible Resources service  
300,000 accessible books in 55 languages  
Currently need publisher permission for  
cross-border exchange of Res...

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Adopted by WIPO in June  
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The UK is not one of them!

Article 2  
Effect of the Treaty on Existing Rights

Article 3  
Implementation of the Treaty

Article 4  
Dispute Resolution

## **Article 5**

### **Cross-Border Exchange of Accessible Format Copies**

"if an accessible format copy is made under a limitation or exception... [it] may be distributed or made available... to a beneficiary person or an authorized entity in another Contracting Party"

## **Article 6**

### **Importation of Accessible Format Copies**

"To the extent that the national law of a Contracting Party would permit a beneficiary person... to make an accessible format copy of a work, the national law... shall also permit them to import an accessible format copy for the benefit of beneficiary persons, without the authorization of the rightholder."

## **Article 7**

### **Obligations Concerning Technological Measures**

Contracting Parties shall take appropriate measures... to ensure that when they provide adequate legal protection... against the circumvention of effective technological measures, this... does not prevent beneficiary persons from enjoying the limitations and exceptions provided for in this Treaty.

# ***DRM and TPM***

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From Kristin R. Eschenfelder (2008) *Every Library's Nightmare? Digital Rights Management, Use Restrictions, and Licensed Scholarly Digital Resources*

Still have to appeal to  
Secretary of State (s296ZE)

***In conclusion...***



***Joined up approach***

***Keep the dialogue going!***

With thanks...

Little Alexander, Academic Liaison Librarian  
Emma Symons, Senior Library Assistant  
Margo Davidson, Equality & Diversity Advisor  
Mike Wiley, Janet Brown & Rachel Lammie,  
Learning Support Team

***With thanks...***

Lottie Alexander, Academic Liaison Librarian

Emma Symons, Senior Library Assistant

Marije Davidson, Equality & Diversity Adviser

Mike Wray, Janet Britton & Rachel Larman,  
Learning Support Team

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# Thank you for listening!

